87-636

Supreme Court, U.S.
FILED
OCT 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

Carroll L. Austin, et al.,

Petitioners,

v.

The Torrington Company, a subsidiary of Ingersoll-Rand Company, Inc.,

Respondent.

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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October 12, 1987

30 pp

## QUESTIONS PRESENTED

1. Under South Carolina law, can two employers lawfully conspire together to blacklist a prospective employee because she is allegedly an organizer for the National Organization of Women and the Equal Rights Amendment?

2. Under South Carolina law, can two employers lawfully conspire together to blacklist a group of prospective employees because they allegedly are either organizers for womens' rights groups, union organizers, militants, emotional problems, have filed Workmen's Compensation claims, or are grouped together with other prospective employees on such list?

3. Under South Carolina law, is it slander to prevent a prospective employee from gaining employment by

falsely accusing such prospective employee of being either:

(a) an organizer for womens' rights groups;

(b) a militant;

(c) or an emotional problem?

4. Under South Carolina law, is it slander to prevent a group of peaceful, law-abiding, and qualified prospective employees from gaining employment by including them on a blacklist of persons falsely accused of being organizers for womens' rights groups, militants, or emotional problems?

## PARTIES

Eleven cases were consolidated for trial in the District Court of South Carolina and on appeal to the Fourth Circuit. Plaintiffs and Appellees below were Carroll L. Austin, Charles S. Glazer, Judy C. Howard, Nancy Brown, Anthony L. Duckett, Josephine Hill, David R. Frick, Ronnie Dean Duckett, James A. McAbee, Jr., John Edward Ward, and Robin W. Caldwell. The Defendants were originally The Torrington Company, a subsidiary of Ingersoll-Rand Company, Inc., and Webb Forging Company, a subsidiary of Jervis B. Webb Company. Webb Forging Company was dismissed for lack of diversity jurisdiction prior to trial and The Torrington Company was Appellant in all eleven cases.

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FOR THE FOURTH CIRCUIT

The Petitioners respectfully request that a Writ of Certiorari issue to review the judgments and opinion of the United States Court of Appeals for the Fourth Circuit.

## OPINIONS BELOW

The unreported opinion of the United States District Court for the District of

South Carolina denying Respondent's Motion for Judgment Notwithstanding the Verdict, Or in the Alternative for New Trial appears in Appendix A (App. A-1 to A-17).

The opinion of the Court of Appeals for the Fourth Circuit on original decision is reported at ___ F.2d ___ and appears in Appendix A (App. A-18 to A-52).

## JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was dated and entered January 23, 1987. A timely Petition for Rehearing in banc was denied by order filed July 16, 1987. This Petition for Certiorari is filed within 90 days of that date. The Court's jurisdiction is involved pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case below was filed, tried and appealed based on the common law of South Carolina. There are no Constitutional or

Statutory provisions believed to be involved in this Petition for Certiorari.

## STATEMENT OF THE CASE

Petitioners filed eleven separate, but similar, civil actions against the Respondent as their former employer and Webb Forging Company, both of whom maintain plants in Union County, South Carolina. Petitioners claimed that the personnel managers of the two Defendants had conspired together in the preparation of a blacklist maintained by Webb Forging containing the names of fourteen former Torrington employees, including all eleven Petitioners, along with the names of three "union organizers" and a representative of the Amalgamated Textile Union. Petitioners claimed that this list was used to prevent them from gaining employment at Webb Forging Company and sought recovery under separate causes of action for slander and blacklisting under South Carolina law.

Webb Forging was dismissed for lack of diversity jurisdiction prior to trial and the jury returned verdicts for all eleven Plaintiffs under both causes of action. Petitioners were awarded either $5,000 or $7,500 each for hurt feelings, and $20,000 each punitive damages. Three Petitioners received awards for economic loss.

The blacklist [Appendix B-1] was maintained in or on the office desk of the personnel manager for Webb Forging, who identified Respondent's personnel manager as the source of the information contained therein. The blacklist was entitled, "CONFIDENTIAL INFORMATION" and stated as follows [asterisks identify the eleven Petitioners]:

*1.CHARLES GLASIER. 17 yrs. (NO)
2.TIM CALICUT MILITANT
3.PAUL RICE WORK.COMP. LABOR BOARD GOOD TALKER (NO)
*4.SONNY MCABEE
*5.NANCY BROWN
*6.JUDY HOWARD ORGANIZER (NOW)+ ERA
*7.ROBIN CALDWELL
*8.JOSEPHINE HILL

*9.CARROLL AUSTIN EMOTIONAL PROBLEM
(MALE)
*10.DAVID FRICK
*11.ANTHONY DUCKETT MILITANT
*12.RONNIE DUCKETT MILITANT
13.ROBERT JETER
*14.EDDIE WARD

ROCK HILL UNION
ORGANIZERS

EDDIE REEVES
RAY RENFROW
? BUMPER

EDDIE NICHOLS AMALGAMATED TEXTILE
UNION

The jury, under proper instructions from the trial judge, found that the statements contained on the blacklist were false and misleading under South Carolina law and that Petitioners Judy Howard (alleged organizer for NOW and ERA), Anthony Duckett (alleged militant), and Charles Glaser were deprived of employment at Webb Forging and suffered economic damages as a result. There was testimony that the Respondent's personnel manager had been specifically told that Judy Howard, a Phi Beta Kappa who applied four times at

Webb Forging, was not an organizer for NOW or ERA.

The Court of Appeals reversed, holding that South Carolina does not recognize a cause of action for blacklisting and that it is not slanderous under South Carolina law to falsely accuse a prospective employee of being an organizer for the womens' rights movement, a militant, or an emotional problem.

REASONS FOR GRANTING THE WRIT

1. The Fourth Circuit's opinion directly conflicts with decisions of the Supreme Court of South Carolina on blacklisting and slander.

The Court of Appeals' decision is in clear conflict with specific decisions of the Supreme Court of South Carolina recognizing a civil cause of action for blacklisting: Rhodes v. Granby Cotton Mills, 87 S.C. 18, 68 S.E. 824 (1910); Mrs. Hall's Cafeteria v. Phoenix Ins. Co., 128 S.C.

209, 122 S.E. 580, 581 (1924); and Parker v. Southeastern Haulers, 210 S.C. 18, 41 S.E.2d 387, 391-392 (1947). The same applies to the common law of South Carolina on libel and slander. See, for example, Woodward v. South Carolina Farm Bureau Ins. Co., 277 S.C. 29, 282 S.E.2d 599, 600 (1981), where the Supreme Court of South Carolina held as a matter of law that it was slanderous per se to state that a doctor "often overtreats his patients."

To allow recovery to a medical doctor who is personally offended by being accused of overtreating his patients and to deny recovery to manual laborers who lose their livelihood as a result of being falsely branded "militants" or "emotional problems" is a fundamental miscarriage of justice.

2. The Court of Appeals departed from the accepted and usual course of the administration of justice in judicial proceedings in such an extreme way as to

require the exercise of this Court's power of supervision.

For one of the United States Courts of Appeals in the latter half of the twentieth century to hold as a matter law that two employers can lawfully conspire together to deny employment to a qualified prospective employee because she is alleged to be or actually is an organizer or supporter of such legitimate causes as equal rights for women should be so shocking to this Court as to require it to exercise its power of discretionary review in this case.

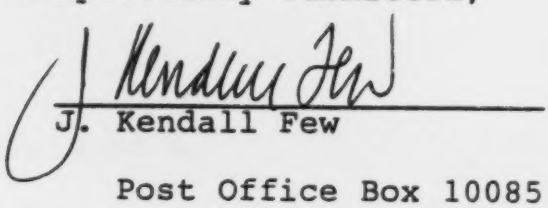
## CONCLUSION

The opinion of the Court of Appeals is a clear threat to the legitimate rights of the American worker. If it is allowed to stand, it will be used as an instrument of oppression to deny employment to law-abiding citizens who legitimately support worthy causes and to those who are falsely accused of possessing characteristics

generally considered to render them unfit for employment.

For these reasons, this Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,



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October 12, 1987

# APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

| | |
|---|---|
| Carroll L. Austin, | C/A # 7:84-763-14 |
| Charles S. Glaser, | C/A # 7:84-999-14 |
| Judy C. Howard, | C/A # 7:84-1531-14 |
| Nancy Brown, | C/A # 7:84-2062-14 |
| Anthony L. Duckett, | C/A # 7:84-2076-14 |
| Josephine Hill, | C/A # 7:84-2182-14 |
| David R. Frick, | C/A # 7:84-2257-14 |
| Ronnie Dean Duckett, | C/A # 7:84-2279-14 |
| James A. McAbee, Jr., | C/A # 7:84-2322-14 |
| John Edward Ward, | C/A # 7:84-2323-14 |
| Robin W. Caldwell, | C/A # 7:84-2324-14 |
| Plaintiffs, | |
| vs. | O R D E R |
| The Torrington Co., a subsidiary of Ingersoll-Rand Co. Inc., | |
| Defendant. | |

This matter is before the Court on Defendant's motion for judgment notwithstanding the verdict (judgment n.o.v.) or, in the alternative, for a new trial, and for stay of execution. For the reasons stated herein, Defendant's motion for judgment n.o.v. or a new trial is denied,

and Defendant's motion to stay of execution is dismissed for mootness.

PROCEEDINGS

Plaintiffs were all formerly employed by Defendant, The Torrington Company (Torrington), at its Tyger River plant in Union, South Carolina. Plaintiffs alleged that Torrington, through its personnel manager, Paul Love, slandered and blacklisted them. During the trial, Torrington moved for a directed verdict at the close of Plaintiffs' case and at the close of all evidence. The motions were denied. The jury returned a verdict of actual and punitive damages for each Plaintiff.

FACTS

On Motion for a directed verdict or on motion for judgment n.o.v, the evidence must be considered in the light most favorable to the party against whom the directed verdict or judgment n.o.v. is asked; any conflict in evidence must be resolved in his favor and every conclusion or inference that can be legitimately drawn therefrom in his behalf must be drawn.

Burcham v. J.P. Stevens & Co., Inc., 209 F. 2d 35, 37 (4th Cir. 1954).

Plaintiffs' claims arose from a telephone conversation between Torrington's personnel manager Love and Bill Dowd, the personnel manager of Webb Forging Company, which operates a plant in Carlisle, South Carolina. Dowd testified that in this conversation, Love said that he could not recommend Plaintiffs for employment. Love referred to Plaintiff Austin as having an emotional problem, to plaintiffs Anthony and Ronnie Ducket as being militants, and Plaintiff Howard as being an organizer for NOW and ERA. A reasonable inference was that the remaining Plaintiffs all fell into an "undesirable" category. Dowd typed the information given to him by Love and retained it at his desk. Dowd's testimony effectively established that this conversation could not have occurred later than the end of August, 1982.

Plaintiff Austin learned of this list from a security guard who testified that he saw it on Dowd's desk, made a copy, and delivered it to his cousin Austin in March, 1984. Plaintiff Austin filed his Complaint in April, 1984 charging, inter alia, blacklisting and defamation. There is no evidence indicating that any of the other Plaintiffs could have reasonably discovered the existence of the blacklist prior to the filing of Austin's Complaint. Between May 7, 1984 and September 28, 1984, suits by the other Plaintiffs were filed. It is undisputed that the statute of limitations could only operate to bar the slander claim contained in the seven Plaintiffs' suits which were filed after September 1, 1984 (A. Duckett, Hill, Frick, R. Duckett, McAbee, Ward, Caldwell).

DISCUSSION

Torrington's motion is based on 14 grounds. Only the contention that Plaintiff

lawsuits were time-barred by the statute of limitations warrants extended discussion.

Provisions governing the limitation of civil actions under South Carolina law are found in S.C. CODE ANN. § 15-3-10, et seq. (Law. Co-op. 1976 & Supp. 1984). The general rule is that civil actions must be commenced within the stated period after the cause of action has accrued. § 15-3-20. A cause of action is said to have accrued at the monent when the plaintiff has a legal right to institute and maintain the action. Brown v. Finger, 240 S.C. 102, 111, 124 S.E. 2d 781, 785 (1962). The length of the governing period varies with different causes of action, from those of 20 years for actions by the state, § 15-3-310, or upon a bond or other writing secured by a mortgage of real property, § 15-3-520, to 10 years for first and second actions for recovery of land, § 15-3-340, or founded on title or for rents

or services, § 15-3-350. A six-year statute governs actions on contracts, § 15-3-530(1), and "any other injury to the person or rights of another, not arising on contract" and not otherwise expressly enumerated by statute, § 15-3-530(5). A recent statute provides also that actions (other than medical malpractice actions) governed by Section 15-3-530(5) shall be commenced within six years after the person "knew or by the exercise of reasonable diligence should have known that he had a cause of action." §15-3-535. The "exercise of reasonable diligence" means that "an injured party must act with some promptness where the facts and circumstances of and injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.C.2d 333, 334 (1981).

The statute govening causes of action for slander and libel is notably one of the shortest, requiring that an action be commenced within two years from the date it accrues. §15-3-550(1). A cause of action for blacklisting is of common law origin in South Carolina. It exists separately from the elements of conspiracy or defamation. See Parker v. Southeastern Haulers, 210 S.C. 18, 28, 41 S.E. 2d 387, 391-92 (1947); Rhodes v. Granby Cotton Mills, 87 S.C. 18, 42-44, 68 S.E. 824, 833-34 (1910). As such, it is independent of these other causes of action, not merely an outgrowth of another traditional tort, and is controlled by the six-year limitation period of Section 15-3-530(5). Cf. Ford v. Hutson, 276 S.C. 157, 167, 276 S. E. 2d 776, 781 (1981) (tort of outrage is independent of other torts, and not merely an outgrowth thereof, so that the six-year statute of Section 15-3-530(5) is applicable).

The jury's verdict in the instant case did not specify whether damages were based upon the slander of Plaintiffs by Defendant's employee Love, or upon the "blacklist" which was created separately therefrom. It was obvious to the Court that a special verdict separating the award of damages under the two causes of action would not have been helpful to Torrington because the facts supporting the two causes of action were so inextricably intertwined that a verdict and an award of damages on blacklisting would have compelled the same result on slander. Therefore, the question of whether damages were based upon slander, governed by a two-year statute of limitations, or blacklisting, governed by a six-year statute, is now effectively mooted, rendering the statute of limitations issue academic. Nevertheless, the Court does address the issue of when the slander cause of action

accrues, commencing the running of the two-year statute of limitations. While the Supreme Court of South Carolina has never spoken on this issue, this Court is confident that if presented with this same question it would rule that Plaintiffs' slander actions were not time-barred.

The South Carolina legislature has seen fit to allow varying lengths of time before a particular wrong must be pursued through the courts. In affixing a particular length of time to a cause of action it may be presumed that the legislature has acted rationally and according to a fixed and informed purpose. See Bradley v. Hullander, 277 S.C. 327, 330, 287 S.E. 2d 140, 141 (1982). The logic of statutes of limitations is that litigation must be commenced within a specified time in order that evidence be readily available and that controversies be ended within a reasonable period of time. Webb v.

Greenwood County, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956). However, the legislature has enacted a tolling statute to protect litigants in particular situations where they could not have reasonably had notice of a claim against another or of an invaded right. As such, these statutes reflect an appropriate balance in policy of discouraging a plaintiff who sleeps on his rights, and yet not unreasonably shielding a wrongdoer.

The logic behind a shorter statute of limitations for defamatory utterances is apparent under most circumstances. The gist of defamation lies in the injury caused to one's reputation, the feeling entertained toward him by others in his community or in the public eye. Wardlaw v. Peck, 282 S.E. 199, 205, 318 S.E. 2d 270, 274 (S.C. Ct. App. 1984). Unlike most torts, defamation is defined in terms of the injury, damage to reputation, and not

in terms of the manner in which the injury is accomplished. Morrison v. National Broadcasting Company, Inc., 19 N.Y. 2d 453, 458, 227 N.E.2d 572, 574, 280 N.Y.S.2d 641, 644 (1967). However, reputation and harm thereto tend to be fluid rather than constant. One can consciously "live down the lie," assuming one knows of its existence, by simply confronting it with conduct which plainly says, "It is not so." Thus, in the general course of events the public nature of this intangible asset, or damage to it, makes the harm readily discoverable in the first instance, and in the second instance renders the harm committed more temporary in its effect than other harms. The legislative enactment of a short two-year limitation is, therefore, fully justified in the normal course of events.

Torrington argues that the slander of Plaintiffs was a defamation to be treated

as any public utterance and that the date of publication or first utterance, a private telephone conversation, should commence the running of the statute of limitations. Torrington argues, in effect, that a surreptitious publication, willfully kept secret from those it harms, which is false and malicious in its origins, and which inflicts actual and reasonably undiscoverable harm to reputation, is a slander to be time-barred because the secret was kept hidden until the two-year statute of limitations had run. This logic would allow a wrongdoer to injure someone by slanderous statements without being subject to meaningful retribution. The argument does not impress the Court and is not consistent with the law of South Carolina and other jurisdictions.

Under other circumstances, fraudulent concealment of a defamatory statement has been held to toll the running of the

statute of limitations. See, e.g., Weinberger v. Retail Credit Company, 498 F.2d 552, 555 (4th Cir. 1974). Three elements are necessary to toll the statute under this doctrine: (1) fraudulent concealment by the party raising the statute, (2) the failure of the innocent party to discover the facts which are the basis of his cause of action, and (3) the exercise of due diligence on his part. Further, the rule that the statute commences on the date of "discovery" of the harm, rather than the more common rule of the date of "publication," has been applied by some courts in instances of false credit reports which have harmed the consumer and come to light only after the statute had expired. Kelley v. Rinkle, 532 S.W.2d 947, 949 (Tex. 1976); Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc., 61 Ill. 2d 129, 136, 334 N.E.2d 160, 164 (1975). The courts which have applied the

"date of discovery" rule have done so out of concern for the potential abuse in allowing the "date of publication"rule to shield undiscovered wrongdoing, Kelley, 532 S.W.2d at 949, and because such a result is inconsistent with the reasoning behind such statutes:

> To hold here that the plaintiff's cause of action accrued, if at all, at the time the credit report was received by the defendant's subscribers would be to follow an abstract and mechanical reasoning in deciding when the cause of action accrued. The purpose of a statute of limitations is certainly not to shield a wrongdoer; rather it is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions.

Olesker, 61 Ill.2d at 136-37, 334 N.E. 2d at 164.

It should be noted that the Olesker decision distinguished the privately damning utterance of a credit report from the publication for public attention and knowledge where the person commented on

has had access to the statement. Id., 61 Ill.2d at 138, 334 N.E.2d at 164. Both Olesker and Kelley expressly excluded the "date of discovery" rule from application where the defamation is made a matter of public knowledge through such agencies as newspapers or television. Olesker, 61 Ill. 2d at 137, 334 N.E.2d at 164; Kelley, 532 S.W.2d at 949.

In Atwell v. Retail Credit Company, 431 F.2d 1008 (4th Cir. 1970), the Fourth Circuit Court of Appeals declined to apply the "date of discovery" rule in a Maryland cause of action for libel committed in the dissemination of a confidential credit report. The decision is based, however, on the then existing Maryland statute of limitations for libel or slander and the failure of the record on review to evidence any fraudulent intent by the defendant in concealing the wrong done the plaintiff. Id. at 1010-11. In short, the

Court found no Maryland exception as to particular causes of action and the time at which they accrue, and found the defendant essentially blameless in plaintiff's delay in bringing the time-barred action.

Subsequent to Atwell, the Maryland Court of Appeals in Sears, Rcebuck and Co. v. Ulman, Md., 287 Md. 397, 401, 412 A.2d 1240, 1242 (1980), recognized that fairness to a plaintiff who has not slept on his rights justifies adopting the "discovery rule" and held that a cause of action for a defamatory credit report accrues when the plaintiff knew or reasonably should have known that the defendant committed a wrongful act which injured or damaged the plaintiff.

A surreptitious slander which results in harm is close akin to a false credit claim which injures, although unknown to the injured party. In this case, the

secrecy surrounding the harm done to Plaintiffs, the real and permanent effect of the harm, and the conduct of Love and Dowd in concealing the act and the injury all warrant the application of a "date of discovery" rule for commencing the statute of limitations. This exception is limited to the facts of this case and does not abrogate the date of utterance rule which applies in the traditional slander case. The other grounds upon which Defendant seeks judgment n.o.v. or a new trial are without merit and are accordingly denied. Further, Defendant's motion for an order staying execution of the judgment pending disposition of Defendant's motion for judgment n.o.v. or for a new trial is also dismissed.

AND IT IS SO ORDERED.

William W. Wilkins, Jr.
United States
District Judge

Greenville, S.C.
June 13, 1985.

# UNITED STATES COURT OF APPEALS
## FOR THE FOURTH CIRCUIT

---

Nos. 85-1740 thru 85-1750

---

Carroll L. Austin, et al

Appellees,

versus

The Torrington Company, a subsidiary of Ingersoll-Rand Company, Inc.,

Appellants,

and

Webb Forging Company, a subsidiary of Jervis B. Webb, Company,

Defendant.

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Appeal from the United States District Court for the District of South Carolina, at Spartanburg. William W. Wilkins, Jr., District Judge. (CA-84-763; 84-999; 84-1531; 84-2062; 84-2076; 84-2182; 84-2257; 84-2279; 84-2323; 84-2324)

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Argued: March 4, 1986

Decided: January 23, 1987

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Before HALL and WILKINSON, Circuit Judges, and MICHAEL, United States District Judge for the Western District of Virginia, sitting by designation.

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David L. Freeman (Carl F. Muller; Wyche, Burgess, Freeman & Parham, P.A.; Robert L. Thompson: Stephen M. Paskoff: Thomas A. Pogue; Elarbee, Thompson & Trapnell on brief) for Appellant; J. Kendall Few (Few & Glenn on brief) for Appellees.

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MICHAEL: District Judge.

This case presents four issues for resolution under the law of South Carolina, Federal jurisdiction being predicated on diversity of citizenship. First, does South Carolina common law recognize a cause of action for "blacklisting"? Second, was the language alleged by the plaintiffs below as slanderous sufficient under South Carolina common law and under the evidence presented at trial, to support the jury's affirmative verdict on the question of slander? Third, were the challenged statements privileged, or

qualifiedly privileged, as a matter of law? Fourth, under the evidence adduced, were the plaintiffs caused to suffer actual damages, and, if so, are the plaintiffs entitled to punitive damages?

## I. Factual Background

The case arises under a somewhat unusual set of facts. Eleven separate cases were filed against the Torrington Company, Appellant herein, by eleven of its former employees. The complaints asserted claims against Torrington and Webb Forging Company, but Webb was dismissed as a party before trial for lack of diversity jurisdiction, and the cases proceeded against Torrington only. These eleven cases were consolidated and tried to a jury in the United States District Court for the District of South Carolina. Verdicts were returned for all eleven plaintiffs, all receiving monetary awards

ranging from $5000.00 to $7500.00 for "hurt feelings", all receiving monetary awards of $20,000.00 each for punitive damages, and three plaintiffs receiving monetary awards ranging from $1350.00 to $7500.00 for economic loss. The remaining eight plaintiffs received nothing for economic loss.

The verdicts were followed by the defendant's motion, among others, for judgment non obstante verdicto, or in the alternative for a new trial. The motion was denied and this appeal followed in timely fashion.

It is apparent that there were some factual differences in the various situations involving the eleven plaintiffs. However, each plaintiff sought actual and punitive damages under two counts, one for defamation and one for "blacklisting". In each of the eleven complaints, the basis asserted for both allegations was a tele-

phone call between the personnel manager of the Appellant, Mr. Love, and the personnel manager of a separate, similar company, the Webb Forging Company, Mr. Dowd.

Essentially, the facts are not much in dispute, so far as the events giving rise to the charges of defamation and blacklisting are concerned. In 1982, because of economic considerations, the Appellant had been required to lay off many of its personnel. At that time, the Webb Forging Company was in the process of establishing its plant in the same community, to operate in somewhat the same business activity as that of Appellant, and Mr. Dowd was engaged in the process of selecting new employees to staff the Webb Forging Company plant.

Incident to that hiring process, one of the plaintiffs, Charles Glaser, a former employee of Torrington, applied to and was interviewed by Mr. Dowd for a position at

the Webb Forging Company. Mr. Glaser had brought to the interview a resume which he left with Mr. Dowd. Dowd then called Mr. Love at Torrington to inquire about matters concerning Glaser's application. At trial, Dowd testified that he was not certain about the recall rights of employees laid off by Torrington, and that he wished to clarify this question. Love indicated that he was not able to recommend Mr. Glaser for employment, and he then apparently went on to state his views about other former employees of Torrington. Mr. Dowd made notes of these comments as they were made, and ultimately reduced them to a memorandum in the following form:

CONFIDENTIAL INFORMATION[1]

*1. CHARLES GLASER. 17 yrs. (No)
2. TIM CALICUT MILITANT
3. PAUL RICE WORK. COMP. LABOR BOARD TALKER (NO)
*4. SONNY MCABEE
*5. NANCY BROWN
*6. JUDY HOWARD ORGANIZER (NOW) + ERA
*7. ROBIN CALDWELL
*8. JOSEPHINE HILL
*9. CARROLL AUSTIN EMOTIONAL PROBLEM (MALE)
*10. DAVID FRICK
*11. ANTHONY DUCKETT MILITANT
*12. RONNIE DUCKETT MILITANT
13. ROBERT JETER
*14. EDDIE WARD

ROCK HILL UNION ORGANIZERS

EDDIE REEVES
RAY RENFROW
? BUMPER

EDDIE NICHOLS AMALGAMATED TEXTILE UNION

This memorandum contained not only the information given by Mr. Love to Mr. Dowd during the telephone call, but also included four names, Eddie Reeves, Ray Renfrow,

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[1]The asterisks were not on the memorandum prepared by Mr. Dowd, but have been added to identify the eleven persons out of the group of fourteen who became plaintiffs.

? Bumper, and Eddie Nichols, which Dowd had received from Love in a previous meeting when the two had discussed union policies, union methodology, etc., in the area of their operations.

Most of the fourteen people listed on the first part of the memorandum had made one or more applications to Webb Forging for employment after they had been laid off by the Appellant. Dowd testified without contradiction at trial that at the time of his telephone conversation with Love, and for some time thereafter, he had approximately 2500 applications for employment in his files, with less than 100 places to be filled initially, but that his method of selecting employees was to act on the recommendation of persons in the community in whom he had trust, and on the recommendation, he would then interview the individual, and, if necessary, would request that the individual fill out an application form

for employment. If he found the recommended individual's application in the file, he did not require a new application.

Dowd testified that the "confidential information" memorandum, supra, was placed in his desk, and remained there for some eighteen months until a security guard saw the list on Dowd's desk, recognized at least two names on the list, made a photocopy of the list, and gave that photocopy to one of the plaintiffs, Austin, who was the nephew of the security guard.

Thereafter, Austin filed suit against the Appellant, and the attendant publicity alerted the other ten plaintiffs to the fact that their names also were contained on the list. The remaining ten plaintiffs then each brought suit and the matter came on for trial. Two of those mentioned on the list who became plaintiffs, Robin Caldwell and David Frick, did not apply for employment with Webb during the period involved in the case.

## II. Discussion

The standard for appellate review of a judgment below, on appeal of denial of a motion for judgment notwithstanding the verdict, or in the alternative for a new trial, is whether there is evidence upon which a jury could properly find a verdict, Ralston Purina Co. v. Edmunds, 241 F. 2d 164, 167 (4th Cir. 1957). Appellate review is not to weigh the contrasting evidence, not to judge credibility of witnesses, and not to substitute the reviewer's judgment of the facts for that of the jury. See Whalen v. Roanoke County Board of Supervisors, 769 F. 2d 221 (4th Cir. 1985) (rev'd en banc on other grounds).

Against this standard, an old case, still followed, holds that a "scintilla" of evidence is not enough to sustain a verdict, Schuyhill and Dauphin Improvement Co. v. Munson, 81 U.S. (14 Wall) 442, 448

(1871), and case law further provides that any inferences drawn by the jury must be "reasonably probable;" mere speculation is insufficient. Lovelace v. Sherwin-Williams, Co., 681 F. 2d 230, 241-42 (4th Cir. 1982).

Applying these requirements to the evidence below, as adduced in the Joint Appendix and the Supplemental Appendix, we address first the issue of blacklisting, and second the issue of slander, noting, as set out more fully infra, that the law of South Carolina actively invokes the concept of malice under both issues.

As a preliminary to consideration of the first issue, the point is made in Appellees' brief that no objection was made in the court below to the charge given the jury on the question of blacklisting. This court ordinarily does not address here objections not timely and properly saved in the trial below. An exception to this rule

is that which requires the reviewing court to consider an error of law which adversely affects the substantive rights of the appellant. As this court has said, "There are instances, however, when issues not previously raised should be entertained on appeal. If the error is "plain" and a refusal to treat it would result in a denial of fundamental justice, it should be decided." See United States v. Barge Shamrock, 635 F. 2d 1108, 1111 (4th Cir. 1980). Further, "Indeed, if deemed necessary to reach the correct result, an appellate court may sua sponte consider points not presented to the district court and not even raised on appeal by any party." See Ricard v. Birch, 529 F.2d 214, 216 (4th Cir. 1975), quoting from Washington Gas Light v. Virginia Electric and Power Co., 438 F.2d 248 (4th Cir. 1971). Here Appellant's contention is that the court below recognized as a tort cognizable under

South Carolina law the act of blacklisting, which recognition severely affected adversely the Appellant on this issue. If there is in fact no such tort recognized under South Carolina law, and if the charge of the court did recognize blacklisting as a tort, then there has been a plain error of law which has, in light of the verdicts, severely affected adversely the rights of the Appellant. Thus, we examine the case to determine answers to these questions.

A. Blacklisting as a tort:

There is sharp controversy between the parties as to whether South Carolina in fact recognizes "blacklisting" as a cause of action separate and distinguishable from the tort of slander. From the case law the act of blacklisting in itself is not considered to be a tort under the law of South Carolina. Rhodes v. Granby Cotton Mills, 87 S.C. 18, 68 S.E. 824 (1910). In Parker v. Southeastern Haulers, 210 S.C.

18, 41 S.E.2d 387 (1947), the court said that, "the majority of an able court [in Granby] held that the blacklist was not illegal per se ..." 110 S.C. at 28, 41 S.E.2d at 391, 329. Under both Granby and Parker, South Carolina law requires that, in order for blacklisting to constitute a tort, there must be some willful or malicious use of the blacklist, by one or a combination of the parties who prepared and used the blacklist, which willful or malicious use results in injury to the plaintiff. Thus, under these cases, the simple act of blacklisting is not a tort in South Carolina. Rather, to effectuate a recovery under a blacklisting theory, the plaintiff must prove that there was a blacklist, a combination of employers who exchanged the information contained on the blacklist, and a willful or malicious use of that blacklist by one or more of the members of the combination, with resultant

injury to the plaintiff. See supra, Granby, 87 S.C. at 42-44, 68 S.E. at 833-4 (Woods, J., concurring).

No controversy exists about the fact that the two employers, speaking through Dowd and Love, did in fact exchange information concerning plaintiffs below which represented a "blacklisting" of those individuals. To the extent that Dowd accepted additional information about other former employees in addition to Glaser, as proffered by Love, that exchange of information covered all of the persons on the "confidential information" memorandum as set out and discussed supra.

The next question to be addressed, then, is whether the evidence below can sustain a finding of willful or malicious use of that blacklist with resultant injuries to the plaintiffs. First, the evidence at trial indicates that Dowd did not use the list's information at all.

His testimony is that the list was never used by him in any way in evaluating any potential employee of Webb Forging. However, there is evidence that the blacklist was seen on Dowd's desk on one or more occasions, most particularly when the security guard saw the list on Dowd's desk and made a photocopy. If the jury chose to believe the testimony of the security guard and others that the list was seen on Dowd's desk, it would have weakened Dowd's testimony that he never referred to the list. However, it appears from the oral argument, the briefs, and the joint appendi that the plaintiffs do not assert a willful or malicious motive on Dowd's part in making the list. Rather, plaintiffs focus on Love; they assert that there was ample evidence from which the jury could have concluded that Love's giving of the information was done maliciously with the intent to hurt the plaintiffs. This was, of

course, strenuously denied by Love throughout his testimony at trial. Love testified that the communication of such information is a regular and permissible activity among personnel managers of various employers.

Of some importance, there is a factual distinction between the facts in this case and those in Granby, supra. In Granby, the plaintiff had been mistakenly placed on a list of strikers which had been exchanged with other employers. It was conceded that the plaintiff had not been a striker at all. Nevertheless, his name had been retained on the list of strikers even after the listing employer had known that the plaintiff was not a striker. Under these facts, a finding that there was some willful or malicious motive activating the employer in keeping the plaintiff's name on the striker list is an understandable, and defensible, conclusion.

In the present appeal, however, the

evidence advanced to support a finding of malicious conduct in connection with the blacklist presents a far different picture. Appellees advance three propositions in attempting to prove a willful or malicious motive by Love: first, of his own volition Love volunteered the information concerning the plaintiffs, except for Charles Glaser; second, the information was in derogation of the plaintiffs' suitability for employment with Webb Forging; third, the information was false.

Given the proposition that the blacklisting is not illegal per se, we cannot see how the three assertions above can be said, in and of themselves, to prove malice by Love. As the Court noted in the Granby opinion, Love's giving such information to Dowd in the context of their mutual interests in the employment process is allowable under South Carolina law. In a broader context, where such information is

exchanged because of a mutual interest in its content, and without malice, penalizing that exchange would be a grave disservice to the employer. Certainly, the prospective employer seeks to acquire information judged pertinent by it to facilitate decision as to employment vel non. The former employer is a source of such information, and perhaps the only source. Proscribing such an interchange would severely inhibit the right of employers to communicate on a matter of serious, mutual concern. It appears that this reasoning underlies the decision of the Court expressed in Judge Woods' concurring opinion in Granby, supra, and this Court finds that reasoning strongly persuasive as it is applied in the South Carolina law.

The fact that Love proffered the information as to all plaintiffs, except Glaser, without specific inquiry by Dowd loses significance in light of the fact

that Dowd initiated the exchange by inquiring about the reinstatement rights of former employees of Torrington. Glaser's application precipitated the inquiry, but the answer to the question as to Torrington reinstatement policy was obviously general in application to all former employees. In the context of that generalized inquiry and response, discussion of employees other than Glaser flowed as a natural consequence.

That the information exchanged between Love and Dowd related to and dealt with the suitability of the plaintiffs for employment is simply the function of such a list. Information normally found in such a list deals with the question of suitability of employment.

Whether the information on the list was or was not false is in the context of the factual pattern here, more a function of subjective opinion than refutable fact. Nothing in the evidence from trial indicates

that the falsity, if any, of the information contained on the list was brought home to Love, except in one case. In that instance, a fellow employee of Judy Howard told Love that Howard was neither an organizer for NOW nor an organizer for ERA. Love apparently responded that he had information which was contrary to that statement and he apparently relied upon that contrary information in his phone conversation with Mr. Dowd. We have already indicated that blacklisting is not illegal per se under South Carolina law. Given this, the subjective opinions of a person making a blacklist do not, in and of themselves, establish malice or a wanton desire to hurt the persons on the list. No information concerning the possible falsity of any of the statements is brought home to Love, except in the case of Howard. In that one case, the mere existence of conflicting information falls far short of

establishing on the part of Love malice[2] with respect to the information on the blacklist concerning her.

After a detailed review of the record, we can find no evidence upon which the plaintiffs could have relied in asserting proof of malice. The three bases asserted by plaintiffs to support a finding of malice, i.e., volunteering information, derogatory information, and falsity of the information, if assumed to be true, do not present as much as that "scintilla" of evidence, under the facts in this case. South Carolina's concept of the necessary

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[2]As indicated in the discussion of the requirement of malice, infra, and of the qualifiedly privileged nature of the communication, also discussed infra, the malice must be "express or actual" malice, sometimes referred to as "malice in fact," that is, that Love was "actuated by ill will in what he did and said, with the design to causelessly and wantonly injure" the plaintiffs. See Bell v. Bank of Abbeville, 208 S.C. 490, 495, 38 S.E.2d. 641, 643 (1946).

"scintilla of evidence" describes it as evidence which must be "real, material, and pertinent and relevant evidence, not speculative and theoretical deductions." See Turner v. American Motorists Ins. Co., 176 S.C. 260, 264, 180 S.E. 55, 57 (1935). More than that "scintilla" of evidence is required to permit the conclusion that the inference d awn here by the jury was reasonably probable," and not the product of speculation. The record, simply put, does not disclose evidence relating to these three factors that can support the quantum leap from the three factors to establishing the required willful or malicious misconduct "-- malice in fact --" on the part of Love. For a discussion of factors held insufficient to establish malice in fact, though much stronger factors favoring the plaintiff than those in the case at bar, see Bell v. Bank of Abbeville, 211 S.C. 167, 44 S.E.2d 328 (1947) (second opinion).

B. Slander:

Under the law of South Carolina, an action for slander requires that the challenged statement be both defamatory and actionable. A defamatory statement is a statement which tends to impeach the plaintiff's reputation. To be actionable, that statement must also injure the plaintiff. Capps v. Watts, 271 S.C. 276, 281, 246 S.E.2d 606, 609 (1978).

Where a statement is defamatory per se, it is actionable without any proof of special damages.[3] Where the defamatory

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[3]A change in this aspect of the law of South Carolina may come about as a result of applying the doctrine of New York Times v. Sullivan, 376 U.S. 254 (1964) and its progeny in a proper state case. However, no such change has been found in any reported South Carolina case. In fact, the latest South Carolina case dealing with this opinion, see Capps, supra, at 609, the Capps opinion having been handed down some fourteen years after New York Times v. Sullivan. Thus, taking South Carolina law as it now stands, Capps affirms the principle presently followed in the reported South Carolina cases.

statement is not defamatory per se, there must be proof of special damages. Capps, supra, at 611. Where special damages are required, in the case of a defamatory statement which is not defamatory per se, those special damages must be a loss of money or some other loss capable of being assessed at a monetary value. Smith v. Phoenix Furniture Co., 339 F. Supp. 969, 971 (D. S. C. 1972).

Here, the district court below held that the entire conversation between Love and Dowd bore a qualified privilege, because of the serious, common interests held by Love and Dowd. The status of the challenged statements are qualifiedly privileged, while not conceded by the appellees, is nonetheless cursorily treated in their brief, asserting now that because Love spoke of other employees than Glaser, Love went beyond the scope of the privilege, so that the protection of qualified privilege was lost.

The court below charged the jury on this point in the following language:

> I charge you that the qualified privilege is applicable to this case and that the defendant is entitled to assert and rely upon this defense. The effect of the qualified privilege defense is to cast upon the plaintiffs the burden of proving malice in fact on the part of the defendant by preponderance of the evidence....

There was no objection below by the plaintiffs to this portion of the charge. Thus, under South Carolina law regarding qualified privilege, the plaintiffs had the heavier burden below of proving defamation, injury, and malice in fact on the part of Love, in order to prevail on their charges of slander. Conwell v. Spur Oil Co., 240 S.C. 170, 181, 125 S.C.2d 270, 276 (S. C. 1962). There is no dispute among the parties that Mr. Love and Mr. Dowd had a common interest, each serving as a personnel manager for an employer in the same community, and from these facts the court below concluded that a qualified

privilege existed. The conclusion is clear, and substantially not disputed that the substance of Love's comments to Dowd was that Love could not recommend plaintiffs for employment. It is on this substance that the appellees attempt to engraft malice in fact.

Come consideration of just what was recorded on the memorandum as to the plaintiffs is in order here. As to Glaser, the comment is "17 yrs. (No)"; as to Howard, "organizer (NOW) & ERA"; as to Austin, "Emotional Problem (male)"; as to A. Duckett and R. Duckett, "militant"; as to McAbee, Brown, Caldwell, Hill, Frick, and Ward, there are no comments of any sort.

Thus, as to the six plaintiffs for whom no comment is made, there is simply no slanderous statement to be found, unless the plaintiffs would have the Court adopt some scheme which would embrace all plaintiffs in a sort of umbrella theory.

Even if this Court were willing to do so, consideration of the comments made as to the five plaintiffs fails to show the required degree of injury which impeaches the particular plaintiff's reputation. As to Glaser, the comment is "17 yrs. (No)". Taken under all the facts here, the statement is Love's statement that he could not recommend hiring Glaser. We cannot see how more can be read into this comment. As to Judy Howard the comment is "Organizer (NOW) & ERA". It is doubtful that there ever was a day when being stated to be an organizer for the National Organization of Women and the Equal Rights Amendment was considered a slander, but certainly that would scarcely be considered the case today or at the time of trial below. As to Austin, the comment is "Emotional Problem (male)." The statement is obviously one of the opinion of Love, but, again, the language used does not "tend to impeach

the reputation of the plaintiff." See, Capps v. Watts, 271 S.C. 276, 281, 246 S.E. 2d 606, 609. As to "emotional problem," aside from the matter of expressing an opinion, these words, without more, identify nothing of the nature of whatever problems there might have been, but leave the reader to speculate according to the individual's predilections to assign some further meaning to the identification of Austin as "(male)". As to A. Duckett and R. Duckett, the comment is "Militant" as to both. Again, Love expresses an opinion, but there is perhaps more comfort to be drawn by these plaintiffs from that description than there are adverse inferences. In the context in which the notes were made, the description may be intended to indicate strong pro-employee feelings and actions, but, as in all the above analyses of these comments, the most important consideration is that each of the descriptions is given in the

framework of qualified privilege, and here, as in the previous comments noted, the statement is intended to convey to Dowd information he could consider in his hiring decisions.

In the fact pattern in this case, and in light of the qualified privilege attaching to the communication, the evidence will not support a finding of slander.

If we assume, however, that this information went beyond a simple statement of non-recommendation for employment, and the memorandum taken as a whole was thus defamatory as to each name listed thereon, the plaintiffs still face the burden of proving actual malice. An inference of malice is not sufficient where the statements are found to be qualifiedly privileged, as was the case below. See Woodward v. South Carolina Farm Bureau Insurance Co., 277 S.C. 29, 282 S.E.2d 599 (1981).

The opinion in Padgett v. Sun News, 278 S.C. 26, 292 S.E. 2d 30 (1982) sets out the following definition of "actual malice," as that term is understood in the law of South Carolina. It requires that the defendant

> acted "with ill will toward the plaintiff or that [he] acted recklessly or wantonly, meaning with conscious indifference toward plaintiff's rights", and requires that "at the time of his act or omission to act the tortfeasor be conscious, or chargeable with consciousness of his wrongdoing." Rogers v. Florence Printing Co., 233 S.C. 567, 577, 106 S.E.2d 258; Jones v. Garner, 250 S.C. 479, 158 S.E. 2d 909.

Sun News at 34.

No evidence of record supports the proposition that Love at the time of transmitting the challenged statements to Dowd was "at the time of his act or omission to act [was] conscious or chargeable with consciousness of his wrongdoing." As illustrated in the discussion of the South

Carolina law governing blacklisting and intentional, improper interferences, etc., Love acted in a way which did not give rise to a tort action under these theories. Certainly, nothing in the evidence showed that Love was "conscious" of any wrongdoing.

It should be noted, also, that under the "actual malice" formulation of Sun News, supra, ill will and consciousness of wrongdoing are conjunctive, so that each element must be supported by more than a "scintilla" of evidence before "actual malice" can be found.

We conclude that, as a matter of law, there was a failure in the evidence below to demonstrate actual malice. Four of the plaintiffs testified below that they "got along fine" with Love. Appellees suggest in their brief that there is only evidence of actual malice toward one of the plaintiffs, Nancy Brown. However, Mrs. Brown's own testimony itself belies this

argument. She stated at trial that there had been some sharp words between her and Mr. Love some two years or more before the blacklisting incident. This is the only evidence advanced to show malice in fact on Love's part toward Nancy Brown. In contrast, the recitation of facts suggesting actual malice in Bell v. Bank of Abbeville, supra (second opinion), shows a series of incidents, far severer than those revealed as to Nancy Brown, which series of incidents was not enough to provide that necessary "scintilla of evidence." Further, Nancy Brown testified that after the incident relied on she had continued to work under Love's supervision and her relationship with him after the incident complained of had been very good. She did not deny Love's testimony to the effect that he had evaluated her for the highest possible wage increases in the intervening two years, and she believed

Love was sorry that she was discharged during the reduction in the Torrington Co. work force. Taking the Brown testimony as a whole, that testimony is, if possible, less than the "scintilla" of evidence discussed supra. Certainly it is not sufficient, as a matter of law, to support a finding that malice in fact on the part of Mr. Love existed at the time the memorandum was prepared.

Similarly, plaintiffs argument that malice on Love's part as to plaintiff Howard could be inferred from certain facts fails, since, given a qualified privilege, there must be proof of malice in fact.

If plaintiffs rely entirely on the Brown incident between Mr. Love and Ms. Brown, as apparently they must, for their proof of actual malice, then, as a matter of law, this evidence does not establish Love's ill will toward Ms. Brown, and that he acted recklessly or wantonly with a

conscious indifference toward her rights, and was conscious, or chargeable with consciousness of his wrongdoing.

We thus conclude that the statements in question were qualifiedly privileged, there was no proof at trial of actual malice on the part of Love, and thus the verdict of the jury on the slander count of the complaint was not supported by the evidence.

III. Conclusion

Because we have found that the verdicts of the jury on the blacklisting and slander counts cannot stand, it is not necessary to address the issues relating to damages, as those issues have been asserted on appeal.

For the reasons indicated above, the decision of the court below in denying a directed verdict is reversed, and the case is remanded with directions to enter judgment for the defendant.

REVERSED AND REMANDED.

Filed July 16, 1987
U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 85-1740(L),
85-1741
85-1742
85-1743
85-1744
85-1745
85-1746
85-1747
85-1748
85-1749
85-1750

Carroll L. Austin, et al, Appellees,

versus

The Torrington company, a subsidiary of Ingersoll-Rand Company, Inc., Appellant,

and

Webb Forging Company, a subsidiary of Jervis B. Webb Company, Defendant.

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Appeal from the United States District Court for the District of South Carolina, at Spartanburg. William W. Wilkins, Jr., District Judge.

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The Appellees' petition for rehearing and suggestion for rehearing in banc were submitted to this court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Michael, United States District Judge for the Western District of Virginia, sitting by designation, with the concurrence of Judge Hall and Judge Wilkinson.

For the Court,

John M. Greacen
Clerk

Filed August 19, 1987
Ann A. Birch, Clerk
Columbia, SC

Filed January 23, 1987
U.S. Court of Appeals
Fourth Circuit

JUDGMENT

UNITED STATES COURT OF APPEALS
for the
Fourth Circuit

No. 85-1740 thru 85-1750

Carroll L. Austin, et al., Appellees,

v.

The Torrington Company, a subsidiary of Ingersoll-Rand Company, Inc., Appellant,

and

Webb Forging Company, a subsidiary of Jervis B. Webb Company, Defendant.

Appeal from the United States District Court for the District of South Carolina.

This cause came to be heard on the record from the United States District Court for the District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed. The case is remanded to the United States District Court for the District of South Carolina, at Spartanburg, for further proceedings consisted with the opinion of this Court filed herewith.

John M. Greacen
CLERK

Petition for Rehearing

Filed 2/6/87

Denied 7/16/87

Original Filed
August 26, 1987
Ann A. Birch, Clerk
U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Carroll A. Austin, et al.
Plaintiffs,

v.

JUDGMENT IN
A CIVIL CASE

The Torrington Company, a subsidiary of Ingersoll-Rand Company, Inc.
Defendant.

Case Numbers: 84-763
84-999
84-1531
84-2062
84-2076
84-2182
84-2257
84-2279
84-2322
84-2323
84-2324

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered. Pursuant to the Judgment of the United States Court of Appeals for the Fourth Circuit,

IT IS ORDERED AND ADJUDGED that the plaintiff(s) take nothing of the defendant. Judgment is hereby entered for the defendant and the action is dismissed on the merits.

FORM APPROVED:

s/Joe F. Anderson, Jr.
Honorable Joe F. Anderson, Jr.

August 26, 1987

Ann A. Birch
Clerk

s/Edith W. Thomas
(By)Deputy Clerk

# APPENDIX B

CONFIDENTIAL INFORMATION

1. CHARLES GLASIER. 17 yrs. (NO)
2. TIM CALICUT MILITANT
3. PAUL RICE WORK.COMP. LABOR BOARD
   GOOD TALKER (NO)
4. SONNY MCABEE
5. NANCY BROWN
6. JUDY HOWARD ORGANIZER (NOW)+ ERA
7. ROBIN CALDWELL
8. JOSEPHINE HILL
9. CARROLL AUSTIN EMOTIONAL PROBLEM (MALE)
10. DAVID FRICK
11. ANTHONY DUCKETT MILITANT
12. RONNIE DUCKETT MILITANT
13. ROBERT JETER
14. EDDIE WARD

ROCK HILL UNION
ORGANIZERS

EDDIE REEVES
RAY RENFROW
? BUMPER

EDDIE NICHOLS AMALGAMATED TEXTILE UNION